
(2010) 07 BOM CK 0033

In the Bombay High Court

Case No : Writ Petition No. 23 of 2008

Prof. Maria Elsa Noronha Wolfango De Silva, deceased by her
legal heir Mr. Antonio Sequeira Coutinho Pereira

APPELLANT

Vs

The Hon"ble Civil Judge Senior Division at Panaji, "A" Court,
Panaji Goa and others

RESPONDENT

Date of Decision : 16-07-2010

Acts Referred:

Citation : (2010) 07 BOM CK 0033

Hon'ble Judges : A.S. Oka, J

Bench : Single Bench

Advocate : V.R. Tamba with Mr. D. Zaveri, for the Appellant; Erach Kotwal with Mr. M.S. Joshi, Advocates for the Respondent Nos. 2(i), to 2(iii), 2v(a), 2v(b), 2(vi) and 2(vii), for the Respondent

Final Decision : Dismissed

Judgement

A.S. Oka, J.—Heard the learned Counsel appearing for the Petitioner and the learned Counsel appearing for Respondent Nos. 2(i), to 2(iii), 2v(a), 2v(b), 2(vi) and 2(vii). This Writ Petition came up before the regular Court taking up the Writ Petitions on 14th July, 2010. The concerned Court has shown its inability to take up the Petition. As per the Administrative Order of the Hon"ble the Acting Chief Justice, the Petition has been assigned to this Court. By this Writ Petition, the challenge in this Writ Petition is to the orders dated 28th November, 2006 and 29th November, 2007 passed by the learned Civil Judge Senior Division at Panaji. At the outset, the learned Counsel appearing for the Petitioner stated that the Petitioner is not pressing the prayer (b) in view of subsequent events. The Inventory proceedings were closed by order dated 12th September, 1990. It appears that an application dated 14th January, 1992 was made being Civil Misc. Application No. 2/1992 for annulment of the Inventory proceedings. The application was rejected by order dated 27th August, 1997. An Appeal from Order was preferred in this Court for challenging the said order. By judgment and order dated 15th January, 1999, the Appeal from Order was allowed. The order

dated 27th August, 1997 passed by the trial Court was set aside and the matter was remanded to the trial Court to hear the parties in the matter relating to application dated 14th January, 1992.

2. After the remand, an application was made at Exhibit M-20 in the pending proceedings for bringing heirs of the deceased parties on record. An order was passed on the said application on 28th November, 2006 by which the said application was disposed of by giving liberty to the party concerned to bring the legal representatives of the Applicant on record as per Portuguese law. An application for review of the said order dated 28th November, 2006 was made by the Petitioner. By order dated 29th November, 2007, the application for review has been rejected. The aforesaid orders dated 28th November, 2006 and 29th November, 2007 have been impugned in the present Writ Petition.

3. The learned Counsel appearing for the Petitioner submitted that the Civil Misc. Application No. 2/1992 was not maintainable in view of the settled law that Inventory proceedings once completed and culminated into a chart of partition cannot be reopened by filing a miscellaneous application. He submitted that the settled provisions of law were not brought to the notice of this Court when the order of remand was passed by this Court in Appeal from Order No. 13/1998. He submitted that an objection to the maintainability of the Civil Misc. Application was raised by the Petitioner by filing a reply. He submitted that before deciding the application at Exhibit M-20, the objection regarding the maintainability ought to have been considered and decided. He submitted that this aspect was brought to the notice of trial Court by filing a review application and even the review application has been rejected without considering the issue raised by the Petitioner regarding the maintainability of the Civil Misc. Application. He submitted that the impugned orders are illegal and deserve to be set aside.

4. I have carefully considered the submissions. A submission was sought to be made that the judgment and order dated 15th January, 1999 in Appeal from Order No. 13/1998 is contrary to law. However, the said submission cannot be considered in the present Writ Petition as the judgment and order dated 15th January, 1999 passed by this Court has attained finality. Perusal of the said order shows that order of remand was passed as regards the Civil Misc. Application dated 14th January, 1992. This Court directed the trial court to decide the application after proper application of mind to the matter in issue and law applicable thereto. Therefore, notwithstanding the order of remand, the objection raised by the Petitioner to the maintainability of the said application remains open and the same will have to be decided by the trial Court.

5. The effect of the impugned order dated 28th November, 2006 is that the legal heirs have been permitted to be brought on record. There is no adjudication made by the trial Court as regards to the objection to the maintainability of the application dated 14th January, 1992. Notwithstanding the said order, at the appropriate stage, the trial Court is bound to consider the objection raised by the Petitioner as regards the maintainability. In Writ jurisdiction, an order permitting

legal heirs to be brought on record cannot be interfered on the ground that the issue of maintainability of the Misc. application dated 14th January, 1992 has been raised. As observed earlier, the said issue is bound to be decided at an appropriate stage. The learned Counsel appearing for the Petitioner submitted that the trial Court be directed to decide the issue of maintainability as a preliminary issue. However, such a direction cannot be issued in this Writ Petition and it is for the Petitioner to make an appropriate application before the trial Court. It is for the trial Court to decide whether the objection regarding the maintainability should be decided by a preliminary issue or whether the said objection should be considered while finally deciding the application.

6. In view of what is observed above, it is not necessary to entertain this Writ Petition as objection regarding the maintainability raised by the Petitioner is not yet decided. Hence, I pass the following order :-

ORDER

(A) The Petition is rejected by keeping open the objection regarding the maintainability to the application dated 14th January, 1992.

(B) The trial Court is directed to decide the said objection at the appropriate stage, in accordance with law.

(C) Hearing of the application dated 14th January, 1992 (Civil Misc. Application No. 2/1992) is expedited and the trial Court is directed to finally decide the application before the end of the year 2010.